


fail. The *Dixon* panel noted that the district court relied on other evidence when it granted the preliminary injunction, but at best this distinction speaks only to the weight that the Court can give the affidavit, not the affidavit's admissibility. Indeed, the *Dixon* panel noted that the district court can consider inadmissible evidence in support for a request for preliminary injunctive relief. *See id.*

Regarding the Motion for Sanctions, the Court finds that Plaintiff has failed to show that the Receiver's actions were the product of gross negligence. The Fifth Circuit has defined "gross negligence" as:

The intentional failure to perform a manifest duty in reckless disregard of the consequences It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected.

Dodson v. Huff (In re Smyth), 207 F.3d 758, 762 (quoting BLACKS LAW DICTIONARY 1033 (6th ed. 1990)). It is at least arguable that the Order Appointing Receiver ("Order") applied to Plunkett's assets. The Order authorized the Receiver to "[c]ollect, marshal, and take custody, control, and possession of all . . . assets traceable to assets owned or controlled by the Receivership Estate." The Court need not determine whether the Receiver had such authority. The record as presented by Plunkett, at best raises a question of negligence, and falls well short of a showing of gross negligence. Plunkett's Motion for Sanctions (doc. 30) is therefore **DENIED**.

SO ORDERED, June 16, 2010.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

